

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

MORRIS WEATHERSPOON,

Plaintiff,

Case No. 2:16-CV-263

v.

HON. GORDON J. QUIST

KIM ESSLIN, et al.,

Defendants.

ORDER ADOPTING IN PART
REPORT AND RECOMMENDATION

On September 12, 2017, Magistrate Judge Timothy Greeley issued a Report and Recommendation (R & R) (ECF No. 44) recommending that the Court grant Defendants Thibault, McDowell, and Esslin's motion to dismiss and dismiss this case in its entirety. Defendants argued in their motion to dismiss that Plaintiff's claims against them are barred by the doctrines of claim and issue preclusion based on this Court's June 20, 2017, findings and judgment in *Weatherspoon v. Thibault , et al.*, No. 2:14-CV-108 (ECF Nos. 176, 177.) The magistrate judge concluded that Plaintiff's claims in the instant case are not barred by claim preclusion. (ECF No. 44 at PageID.404.) However, the magistrate judge concluded that issue preclusion applies in light of the Court's findings in Case No. 2:14-CV-108. (*Id.* at PageID.405.) The magistrate judge thus recommended that the Court grant Defendants' motion to dismiss and dismiss this case in its entirety. (*Id.* at PageID.406.)

Plaintiff has filed Objections to the R & R. (ECF No. 49.) Pursuant to 28 U.S.C. § 636(b), upon receiving objections to a report and recommendation, the district judge "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." After conducting a de novo review of the R & R and Plaintiff's

Objections, the Court concludes that the R & R should be adopted with regard to the magistrate judge's recommendation that Defendants' motion to dismiss be granted. The Court will reject the recommendation that the case be dismissed in its entirety because Plaintiff's claims against Defendant Strahan have been reinstated. (ECF. No. 47.)

Although Plaintiff's Objections are lengthy, they do not undermine the magistrate judge's analysis that this Court's findings in Case No. 2:14-CV-108 preclude Plaintiff's allegations in this case that Defendants Thibault, McDowell, and Esslin acted with deliberate indifference to Plaintiff's health or safety for purposes of an Eighth Amendment claim. In his Objections, Plaintiff continues to focus on the arguments he made in his post-trial motions in Case No. 2:14-CV-108, which the Court recently rejected. Accordingly, Plaintiff fails to persuade the Court that the magistrate judge erred in his analysis in the R & R.

Therefore,

IT IS HEREBY ORDERED that the September 12, 2017, Report and Recommendation (ECF No. 44) is **ADOPTED IN PART**. Defendants Thibault, McDowell, and Esslin's Motion to Dismiss (captioned motion for summary judgment) (ECF No. 29) is **GRANTED**, and Plaintiff's claims against those Defendants are **DISMISSED WITH PREJUDICE**. The case will continue with regard to Plaintiff's claims against Defendant Strahan.

IT IS FURTHER ORDERED that Defendants' Motion to Stay Discovery (ECF No. 32) and Plaintiff's Motions to Strike and to Compel (ECF Nos. 37, 39 and 41) are **DENIED AS MOOT**.

Dated: December 15, 2017

/s/ Gordon J. Quist
GORDON J. QUIST
UNITED STATES DISTRICT JUDGE